APPLICANTS:
James & Lynda Quigg

REQUEST: A variance to create a lot with less than 2 acres and without a development right in the AG District

HEARING DATE: May 5, 2004

BEFORE THE

ZONING HEARING EXAMINER

FOR HARFORD COUNTY

BOARD OF APPEALS

Case No. 5411

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: James & Lynda Quigg

LOCATION: 912 – 916 Vale Road, Bel Air, Maryland 21014
Tax Map: 48 / Grid: 1D / Parcel: 81
Third Election District

ZONING: AG / Agricultural

REQUEST: A variance pursuant to Section 267-34C, Table II, of the Harford County Code to create a lot with less than 2 acres, and a variance pursuant to Section 267-34D(3) to create a lot without a development right.

TESTIMONY AND EVIDENCE OF RECORD:

The Applicant, James A. Quigg, testified that he had purchased the subject property, which is a 3.811 acre parcel located on Vale Road, north of Bel Air, in 1982 from Raymond Graybeal. Two houses were located on the property at that time, as well as a barn which has now been taken down and removed.

Mr. Quigg identified the houses on the property by reference to a plat in the record identified as Attachment 4 to the Staff Report. Dwelling "A", located to the westerly side of the property, is apparently an old barracks moved from Aberdeen Proving Ground in the mid 1940's. This building has been improved by Mr. Quigg over the last 3-4 years, and as a result is now lived in by Mr. Quigg's son and family. Mr. Quigg testified to the fairly extensive improvements he had made to his property, including the addition of a deck, garage and new septic system.

Mr. Quigg then described Dwelling "B", which is located closer to Vale Road, on the easterly side of the property. This dwelling was built in the 1920's and was originally a stuccoed house. At the time Vale Road was a dirt road. When Mr. Quigg purchased the property it was grown over and needed renovation. For most of the approximately 20 years Mr. Quigg has owned the property, Dwelling "B" was occupied by an elderly lady who rented the property and who finally left the premises last summer.

At that time the condition of the property was very poor, as the occupant resisted Mr. Quigg's efforts to improve the property while she was living there. Mr. Quigg did, however, replace the well and septic system. Two-thirds of the basement was dirt; the house was deteriorated; it has had termites and it was impossible to keep rodents out. Mr. Quigg has requested from the County a permit to demolish the house. He is now seeking this variance in order to reconstruct the house at this location and subdivide the 3.811 acre parcel into two, allowing each house to be on a separate parcel.

All work which Mr. Quigg has done over the years on both houses has been done with Harford County permits.

Mr. Quigg indicated that the 3.811 acre parcel was originally three parcels – one parcel consisted of the 12 foot right-of-way across the rear of his property; the remaining property was divided into two parcels. However, when Mr. Quigg took title to his property by Deed dated August 12, 1982 (marked as Applicant's Exhibit No. 1), he took title by a particular description of one parcel, not three.[1]

Mr. Quigg stated that the lot was unusual when he purchased it as it had two dwellings. He is aware of no other lots in the area which have two dwellings. He hopes to replace Dwelling "B" with a new residence to be occupied by his other son David, and David's family. Both of Mr. Quigg's sons were in attendance at the hearing. Mr. Quigg, who lives directly behind the subject property on Beetree Court (see Attachment 4 to Staff Report) would like to have his sons live on the subject property so that he can be close to them and his grandchildren.

Mr. Quigg stated that the area is for the most part residential. There is an extraordinary amount of traffic on Vale Road, which has increased over the years. New subdivisions are springing up in his neighborhood.

Mr. Quigg stated that his zoning was unusual in that the subject property is zoned agricultural whereas the property to the north and east is zoned R1, and the property to the west is zoned RR. (See Attachment 11 to the Staff Report). The subject property is surrounded by residential properties. However, according to Mr. Quigg, there are no other lots of similar size in the area. Most surrounding lots are smaller.

Mr. Quigg believes that the variance, if granted, would have no adverse impact on the neighborhood. The removal of Dwelling "B" and a new dwelling being constructed in its place would only improve the neighborhood. He would suffer a hardship if he could not rebuild Dwelling "B". He would lose the rental income from it.

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[1] While apparently the subject property was at one time at least two separate parcels, both Dwelling "A" and Dwelling "B", however, were located on only one of the two parcels.

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Mr. Quigg maintains a small nursery on his other property located to the rear of the subject property on Beetree Court. That nursery would expand onto the subject property if the variance were not granted. Mr. Quigg asserted that a relatively nice dwelling in place of existing Dwelling "B" would be much more beneficial to the County, economically, then would be a nursery. He also stated that the existing well and septic would have to be abandoned.

Mr. Quigg was surprised when he learned this was the only agricultural zoned property in the area. He understood the property was zoned agricultural when he purchased it.

Upon cross-examination by People's Counsel Mr. Quigg indicated that he had, over the years, four or five different tenants in Dwelling "A". For the most part, only one tenant had been living in Dwelling "B". Mr. Quigg believed the property to be only one parcel when it was purchased in 1982.

Mr. Quigg reiterated that he would expand his existing nursery onto the subject property if he could not rebuild Dwelling "B". The removal of some existing trees would be required if he expanded his nursery.

Next in support of the application testified Robert Fender, 1012 Vale Road, Bel Air. Mr. Fender indicated he owns a number of other properties in the area, and that he himself has lived in the area since the 1930's. He is familiar with the subject property and the surrounding area. He recalls Dwelling "B" as being located on the property for as long as Mr. Fender can remember. Dwelling "A" came on the property sometime in the 1940's, he recollects.

The rebuilding of Dwelling "B" would have no negative impact on the neighborhood. He has spoken to ten to twelve neighbors, and none of them have an objection. He indicated the area is overrun with new developments and he doesn't believe this requested variance would have any negative impact.

Next testified Anthony McClune of the Harford County Department of Planning and Zoning. Mr. McClune indicated, under examination by Applicant's counsel, that 1982 was the effective date of the new Zoning Code.[2] The date which is used to establish development rights is February 8, 1977. If Mr. Quigg actually had title to two separate properties, he would have had two development rights according to Mr. McClune. Mr. McClune indicated that the minimum lot size in rural residential areas is one and one-half (1 ½) acres; the minimum density is one (1) lot per two (2) acres; the minimum lot size for lots in the R1 district, because of septic reserve requirements, is 60,000 square feet.

Mr. McClune indicated that Dwelling "B" was a valid non-conforming second structure on the lot, at least while it was being occupied.

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[2] The effective date was actually September 1, 1982.

Mr. McClune, in reiterating the position of the Harford County Department of Planning and Zoning, stated that the subject property is not unique. He and the Department have been given little information to justify an argument of uniqueness except that the Applicant wants permission to reconstruct the second dwelling. Mr. McClune indicated that the request does not in and of itself make the property unique. There is nothing about the configuration or topography, or zoning patterns in the area, which would be a basis for a finding of uniqueness. The existence of a second non-confirming dwelling on the property does not make it unique.

Mr. McClune, upon cross-examination by Applicants' counsel, indicated that prior to the effective date of the 1982 Development Regulations, a two (2) acre minimum lot size was required in an AG district.

Mr. McClune indicated that if the non-confirming use ceases for more than one (1) year, then the right to continue the non-conforming use terminates.

Mr. McClune indicated that there had been a few Board of Appeals cases for the purpose of subdividing property without a development right. He is not aware of any cases for a second residence on the same parcel.

No opponents testified in opposition. Harford County People's Counsel is opposed.

APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

"Variances.

A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:

(1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.

(2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.

B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.

C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval."

Section 267-34D(3) of the of the Harford County Code states:

"(3) Residential development, on parcels as described in the land records of February 8, 1977, as provided below:

(a) One lot shall be permitted on any parcel of land that is less than 11 acres.

(b) Two lots shall be permitted on any parcel of land that is from 11 acres to 19.99 acres.

(c) An additional lot shall be permitted for each additional 10 acres in excess of 20 acres.

(d) An additional lot shall be permitted for any member of the immediate family of persons who were individual owners of record (not corporate, partnership or joint-venture owners) of the parcel. Immediate family shall be limited to fathers, mothers, brothers, sisters, sons and daughters.

(e) Any new lot created pursuant to Subsection D(2)(a) through (d) above shall be a minimum of two acres unless that lot is located in the Agriculture Preservation District established pursuant to Section 2-501 et seq. of the Agriculture Article of the Annotated Code of Maryland, then the lot size shall be that as approved by the state.

In the event that the primary parcel is removed from the district, the owner shall submit a revised subdivision plan, establishing a minimum lot size of two acres. At such time, the owner or his successors in title shall prepare and record the necessary deeds for the two-acre conveyance and shall notify, in writing, the Department of Planning and Zoning for the conveyance.

(f) The development rights created herein may be transferred pursuant to Subsection D(4) below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Evidence of record demonstrated that the Applicant purchased the subject property in 1982 as a single lot. At the time of his purchase the property was improved by two older buildings, one of which was a converted barracks from Aberdeen Proving Ground, the other being a relatively dilapidated dwelling which was constructed before World War II.

The Applicant has made use of both of those dwellings since the time he purchased the property. The barracks building has been improved and is inhabited by Mr. Quigg's son and his son's family. The older dwelling was inhabited for almost 20 years by a tenant.

Mr. Quigg now desires to subdivide the subject property into two parcels, which would each contain a dwelling. While Mr. Quigg intends to demolish the older home, he has plans to build a replacement dwelling on what would be, he hopes, the second buildable lot.

Unfortunately, the property is neither unique nor does it exhibit unusual topographical conditions so as to cause him practical difficulty or unnecessary hardship. By his own admission, the Applicant was aware when he purchased the property that it was one parcel. For over twenty years he has used the property for investment purposes. The property has other potential uses. As the Applicant testified, he would, if the variance were denied, expand his nursery onto the property.[3] Of course, the existing lot can continue to be used as a building lot.

In short, there is nothing of a physical nature about the property which provides a sufficient basis for the finding of uniqueness. The only argument advanced by the Applicant during his testimony is that the subject property is zoned agriculture, while other properties surrounding it are zoned R1. This argument is unpersuasive as a review of the Harford County zoning map (Attachment 11 to the Staff Report) shows that property to the west of the subject parcel is zoned RR, and property to the southwest is zoned AG.

[3] Mr. Quigg owns and resides on a parcel adjoining the subject property.

Uniqueness" for purposes of the Harford County Zoning Code is not a term of art, to vary according to one's perception. It has a very specific meaning.

> ". . . 'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, sub-surface conditions, environmental factors, historical significance, access or non access to navigational waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual agricultural aspects and bearing or party walls." See North v. St. Mary's County, 99 Md. App. 512, 514 (1993).

As pointed out above, there is no feature of the subject property which even an expansive reading of North v. St. Mary's County would allow one to consider to be unusual.

Furthermore, the Development Regulations allow more than one home on the subject property in certain instances. Indeed, the Applicant's property was non-conforming in that it had two dwelling located thereon. The Applicant, if he acted in such a way as to lose a non-conforming status of the property, did so to his own detriment. It is not the purpose of the Harford County Development Regulations to legitimatize or continue non-conforming uses.

Accordingly, the existence of two dwellings on a single lot, with one of the dwellings to be demolished, does not justify the granting of the variance.

In making this finding the Hearing Examiner is aware of Applicant's arguments as set forth in his brief. They are addressed as follows:

1. *Applicant argues the property is unique because it is a 4 acre parcel, in an area "where small lot subdivisions are becoming common place."*

   It is found, to the contrary, that no persuasive evidence was presented that 4 acre parcels, zoned agricultural, are unique or even unusual in Harford County. Scarcity of available lots is not the same as uniqueness.

2. *Applicant argues that "the agriculturally zoned lot adjoining it are non-conforming-in that they are less than 2 acres in size."*

   There is only one lot adjoining the subject property which is zoned agriculture. Accordingly, this argument is rejected as having no bearing on the issue of uniqueness.

3. *The property is improved by two fully self sufficient dwellings.*

   One dwelling is to be demolished, if not already demolished. Even if it were not demolished, such a characteristic does not rise to the level of uniqueness as defined by North v. St. Mary's County, and as discussed above.

4. *Two dwellings were supported by separate septic systems and separate wells.*

   The Hearing Examiner finds this assertion to be of no consequence to the issue of uniqueness.

5. *Applicant's original surveyor or settlement agent made a mistake or was ignorant of his rights when the property was conveyed to the him in 1982.*

   It is found that this is not a basis that can support a finding of uniqueness as this assertion has no bearing on the physical characteristics of the property.

The Hearing Examiner further finds that even if the property were found to be unique, there is no resulting practical difficulty or unnecessary hardship. The property can be utilized for one residential dwelling. The Applicant can, furthermore, use the property for two residential dwellings if he preserves the non-conforming use structure.

In truth, the Applicant's hardship is that he cannot do what he wishes to do, i.e., subdivide the property into two lots. That goal may be obtained if there is something unique about the property that causes the Code to impact upon the Applicant in some unusual or unfair way. The resulting impact must cause the Applicant some hardship. It is found, however, there is simply nothing unique about the property which compels this result. Indeed, if granted these variances would unfairly confer upon the Applicant a benefit not available to others with similarly configured lots.

CONCLUSION:

For the above reasons, the requested variance is denied.

Date: July 23, 2004

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner